Kleindienst Chances Rated Under

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Two months ago, when Richard G. Kleindienst was nominated by President Nixon to be the new Attorney General, his prospects looked so bright that there was talk he might be confirmed unanimously by the Senate.

A month ago, Kleindienst seemed certain to survive the storm over whether there was a connection between the settlement of three antitrust suits against the International Telephone and Telegraph Corp. last year and ITT's pledge of at least $200,000 to help bring the 1972 Republican National Convention to San Diego.

Today, with the hearings on his nomination still continuing (they were reopened at his own request to "clear up" the ITT affair). Kleindienst's chances of becoming Attorney General are rated by most Senate strategists at something less than 50-50.

But if Kleindienst fails confirmation, it will almost certainly not be on the basis of an objective evaluation of his qualifications for the cabined post. That question may never even come to a vote.

Victim of Impasse

He would instead, be the victim of an impasse between the White House and the Senate on the issue of "executive privilege"—the immunity from questioning claimed by the executive branch on behalf of presidential advisers—and of the Nixon administration's refusal to compromise on that prinicple.

The White House formally said "no" last week to the Senate Judiciary Committee's request for testimony from Peter M. Flanigan, the economic adviser who recruited an outside report that became a factor in the Justice Department's decision to settle with ITT.

That refusal touched off an explosion by Sen. Sam J. Ervin Jr. (D-N.C.), who is acknowledged as the Senate's leading constitutional expert. He was joined yesterday by Sen. Russell B. Long (D-La.) in insisting that Flanigan testify.

Committee aides concede that Flanigan's significance in the ITT case is probably minimal; they don't think the senators would find out all that much new if he did testify.

Symbol for Both Sides

But he is a symbol for both sides in the dispute.

For the White House, Flanigan's testimony would represent a foot in the door for contentious Senate committees. If he goes, administration aides reason, how could the line continue to be held, for example, agains sending Henry Kissinger President Nixon's nationa security adviser, to testify about the war in Vietnam.

The Senate is especially touchy on the subject righ now, because while the ad ministration claims execu tive privilege for White House aides, it is contend ing that the legislative aides to senators may be ques tioned by federal grand juries—investigative arms of the executive and judi cial branches of govern ment.

That is exactly the posi tion taken by the Justice De partment in the case involv ing its attempts to probe the release last summer by Sen Mike Gravel (D-Alaska) of the top secret Pentagon Papers on U. S. policy in Vietnam.

There was a brief flicker of compromise last week when Sen. Charles McC. Mathias (R-Md.) suggested that members of the Judiciary Committee could meet with Flanigan on neutral ground.

But the White House told Senate Republican leaders it was not interested.

In the meantime, Ervin also shot down the Mathias proposal, insisting that noth ing short of a full public hearing with a transcript would do.

Suggest Gesture

Some Senate Democratic aides suggested last week that the President might be planning to hold out for a time and then, in a dramatic gesture, rescue Kleindienst by sending Flanigan to testify in a one-time-only exception to the executive privilege rule.

Ervin took care of that prospect, too, when he increased the ante and said the committee needs to hear from at least two other White House aides mentioned in the hearings. Yet another two came up at Fri-

day's hearing.

Democratic strategy aside, Senate Republican sources intimated at the end of the week that the White House had already decided to do exactly what Ervin charged: sacrifice Kleindienst "on the altar of executive privilege."

According to the sources, the administration blames the nominee for sowing a great deal of election-year

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trouble by calling for the new hearings in the first place. So many names and problems have been raised that Kleindienst may have become a liability to the President.

The deadlock over Flanigan has also played into the hands of Senate Democrats who would find it difficult to vote against Kleindienst but would not object to reaping some political advantage from his defeat.

"You have to have more than inference to declare a man evil and reject him" for the President's cabinet, one Northern Democrat said last week.

One Way Out

But he acknowledged that it would be a way out of the dilemma for him to be able to reject Kleindienst on the grounds that the President had affronted the Senate by an improper invocation of executive privilege.

Should Kleindienst not be confirmed, or even voted upon, he is expected to be left in the position of Acting Attorney General for the rest of the year.

And the issue then could present this year's Democratic presidential candidate with an invaluable campaign promise: To appoint an Attorney General who can be confirmed by the United States Senate.

Associated Press

Richard J. Kleindienst, President Nixon's choice for attorney general, may become victim of an impasse.